

Elections after elections: the show goes on

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In time of creation of a so-much sought-after parliamentary majority and difficult negotiations between different political forces, every seat won in a majoritarian constituency is even more valuable. Nowadays, the political forces that made it into the parliament engage in vigorous political consultations, seeking to recruit independent MPs into larger factions. It seems the majority is perceived literally «the more the better».

On April 9, 2002, leader of the «Za Yedynu Ukrainu» block, head of the presidential administration Volodymyr Lytvyn announced that as many as 145 new «majoritarian» MPs agreed to join the 35 members of the list of the block. In his opinion, that allows him to believe that the MPs of the «Za Yedynu Ukrainu» block «will be able to become the core of the parliamentary majority».

The active chase for majoritarian MPs may lead to an awkward situation: the block that got only a little more than 11 percent of the votes might become an unchallenged leader. Apparently, certain forces have rather specific vision and interpretation of the 2002 election results. Their eager efforts may distort the disposition of forces, elected by the people, as the «Za Yedynu Ukrainu» block definitely cannot be seen as the people's favorite. Furthermore, the factions, created by means of recruiting independent candidates through pressure and promises of favors for their businesses are unlikely to be stable and manageable. Similar challenges face the majority if it is gathered through such a method – such a majority would be far from stability and consolidation. It looks like the power brokers do not learn on their mistakes and reproduce the failed example of the faction of the People's Democratic Party of Ukraine (PDP) of 1998. Then the membership in the PDP was growing rapidly. By April 25, 1998, the PDP faction had 70 members, 40 of whom were not members of the party. About 10 days later the faction was 85-strong. However, as the party began to lose influence and was substituted by its competitors as «the party of power», the faction began to shrink similarly rapidly, and by the end of this parliament (2002) it numbered only 14 MPs.

While the pressure on independent MPs to join the faction is strong, it is still difficult to say whether the faction will grow to 180 MPs, as predicted by Lytvyn. For instance, the Dnipropetrovsk-based MP Oleg Tsariov, elected in the majoritarian constituency #40, refuted the information that he had agreed to join the «Za Yedynu Ukrainu» faction in the new parliament (www.korrespondent.net, April 10, 2001).

Although the elections are over and preliminary results have been announced, and the winners are in process of calculating their faction members, the final configuration of the

parliament still remains unclear. The outcome of the elections itself has been challenged in a number of majoritarian constituencies. Yet, it is the final list of the majoritarian MPs that will add the final shape to the majority and the parliament as a whole. Currently the Central Election Commission (CEC) is in process of reviewing the complaints about actions of regional election commissions and summing up the results. Individual problems are dealt with by regional election commissions and the courts.

Actually, according to Article 77 of the election law, in some specified cases the CEC may judge the elections in some specified constituencies invalid. The reasons for that would be major violations of the election law «that do not allow to determine the results of the expression of the voters' volition with adequate probability» provided that «the number of polling stations at which voting in a single-mandate constituency is judged invalid is no less than 25 percent of the total number of polling stations on the territory of that single-mandate constituency».

The CEC could accept complaints about the voting results till April 5. Currently the CEC is reviewing 99 complaints from 50 single-mandate constituencies. According to the CEC secretary Rostislav Davydovych, the claimants mainly asked to invalidate results of the elections in specific constituencies, claiming there were major violations or that the local election commissions worked inadequately (Ukraina Moloda, April 9, 2002).

Generally, the number of complaints received by the CEC is slightly higher than in 1998. Then, before the 1998 election results were officially announced, the CEC judged about 70 complaints. The main conclusion of the CEC was that «there had been irregularities, but they had not had substantial impact on the voting results» (Silski Visti, April 16, 1998). Yet, by April 29, 1998, results of elections in 11 majoritarian constituencies were judged invalid, and the Pechersky borough court of Kyiv investigated 22 more complaints. Nowadays, election results are challenged in fewer constituencies. By April 12, 2002, the election results in only one majoritarian constituency, #90, was announced invalid by the CEC, but many more cases are still unresolved. In such situations, the role of the court becomes critical.

The block of Victor Yushchenko in Ukraine has been particularly affected by the process, as the candidate who won in constituency #90 was nominated by the block. The CEC, however, judged that the elections in the constituency were invalid, based on the complaint filed by an individual named Bohdan Kondiuk. The official reason was the fact that on March 30 the regional election commission removed candidate Mykola Shkriblyak from the race, as he was killed the day before. Several other candidates who had run in that constituency formally withdrew from the race. However, the resolution was not transferred to local election commissions, and on the polling day the ballots still included the names of the candidates that had withdrawn. In a number of polling stations, the information about the withdrawal of the candidates from the race was received on the polling day after the voting began. In accordance with the election law (Article 77, paragraph 1), «The CEC may judge the elections of a deputy in a majoritarian constituency invalid following the recommendation of a relevant election commission if «the number of polling stations in which the voting was judged invalid comprises at least

25 percent of the total number of polling stations formed at the territory of that majoritarian constituency.»

Hence, upon judging the election results in the constituency to be invalid, the CEC abolished its resolution about registration of Roman Zvarych as the winner in that constituency. On March 31, Zvarych received 60.9 percent of the votes. His strongest competitor, director of the TIM company (the town of Nadvirna) Ihor Tymchuk got 9.96 percent. Commenting on the decision of the CEC, Zvarych dismissed the judgment as illegitimate. In his view, the CEC might make such a decision «in cases when the registered irregularities had an impact on the voting results <...> nobody denied the fact that I got 78,000 votes. The point is that at four polling stations the ballots did not indicate «withdrawn» opposite to the names of the candidates who withdrew from the race. It is hard for me to understand how that can influence the fact that 78,000 persons voted for me,» he argued. He added that «part 2 of Article 73 of the parliamentary election law contains «direct prohibition to make such decisions in cases when the irregularities were to the benefit of one of the candidates that failed» (Interfax-Ukraine, April 10, 2002). Zvarych announced he intended to complain to the Supreme Court and argued that the CEC decision had been based more on politics than on law: «I think there are all reasons to say that the decision does not meet the election law, and I begin to be convinced that, most likely, the matter is not law but politics, that the decision was made, to put it mildly, with a certain political subtext,» he stressed.

Another loss from the Nasha Ukraina list occurred in majoritarian constituency #119, where the result of the voting was also abolished by the CEC based on the complaint from candidate Zoreslava Romovska, and the vote counting protocols which, according to Romovska, has been forged. The CEC decided that there were substantial irregularities in 36 protocols and judged to annul the results of the voting in that constituency, where the victory had been initially given to Oleksandr Hudyma. The CEC also ruled that the regional election commission should review protocols of the relevant local election commissions and the protocols sent by Romovska.

Yet another case of annulment of the voting results occurred in majoritarian constituency #18. On April 10 the CEC annulled the decision of the regional election commission that had given the victory to members of the Socialist party Svitlana Melnyk, and the subsequent decision of the same regional election commission to judge the elections in that constituency invalid. The CEC gave the regional election commission two days to review all 223 complaints but those reviewed by the Shargorod court of the Vinnytsya region, and announce the final results of the voting based on that review. According to the protocols, Svitlana Melnyk received 27,496 votes, and her most successful competitor, a businessman from Kyiv Yevhen Sukhin received 25,454 votes. According to a leader of the Socialist party Josyp Vinsky, the Socialists are going to challenge that decision in court. Vinsky argues that the Socialists have won fairly and blamed the CEC for inaction (Interfax-Ukraine, April 11, 2002).

Among the complaints rejected by the CEC to date is the one from member of the Communist Party Svitlana Druziuk who demanded to annul the election results in

constituency #138 because the ballots there had presented her a candidate from the Communist Party (renewed), a competitor of the «proper» Communists», not the Communist Party. Similarly, the CEC rejected the complaints from member of the Ukrainian Republican Party Vyacheslav Bilous, in constituency #148, where the victory was given to chairman of the board of the Ukrnafta Corporation Oleg Salmin. The list of rejected complaints includes those by member of the PDP and candidate of the «Za Yedynu Ukrainu» Petro Melnyk (constituency #95), Vitaly Zhuravsky (constituency #68), and Oleksiy Shekhovtsov (constituency # 52). The complaint by Mykhailo Serbin (constituency #58), where a large number of «strangers» with absentee vote permits were reportedly brought by some candidates to vote in his favor, was also rejected, and the victory was given to representative of the «Za Yedynu Ukrainu!» block Oleksandr Leshchynsky. Other rejected complaints claimed the election results were distorted by the violations in constituencies #84 (Anatoly Yermak), #171, #92, #199, #141, #224, #146 (Oleksandr Kulyk), #139 (Oleksandr Zhovtis), #217 (Oleg Lyashko), #218 (Pavlo Shkrobot), #221, #219, #66, #15, #188, #40, #135, and #122. The CEC, though, ordered the verification of protocols of local election commissions of constituencies #59 and #34.

Another case when the resolution on the voting results was annulled occurred in constituency #35 and concerned candidate Oleksandr Zhyr, the head of the process of parliamentary investigation into the Melnichenko tapes. By the way, the election results were also annulled in that constituency in 1998, and the victory was given to Zhyr. Nowadays Zhyr argues that he has a video tape that shows «rude violations of the election law and facts of interference of local officials with the election process» (Interfax-Ukraina, April 9, 2002). He argues that on the polling day the militia did not let official observers representing any of the candidates, except the candidate of the «Za Yedynu Ukrainu!» to enter the polling stations. He also adds that his observers managed to document a major discrepancy in a number of ballots received by the regional election commission from the CEC and the total number of ballots indicated in the commission's protocols after the voting. Zhyr has filed his complaint with the Supreme Court of Ukraine.

The CEC is supposed to announce the election results in majoritarian constituencies later today. However, there are reasons to believe that there will be more constituencies in which the results would be annulled as invalid. Then the matters will go to courts. According to par. 5 of Article 77 of the parliamentary election law, «the Central Election Commission may judge the election of an MP in a majoritarian constituency as invalid on its own initiative if there are reasons envisaged by par. 1 of this article, or based on judgement of the court.» It is worth noting that complaints of candidates that belong to some political forces are satisfied more often than complaints of the others. So far the problems and irregularities have been «noticed» mostly in cases when the winners were representatives of Nasha Ukraina or the Socialist party, but not the pro-presidential forces. Therefore, in some of the cases the decisions to reconsider the election results could be based more on political considerations than on transparent and unbiased judgement. Before the final results are announced, a threat that the voting results may be reviewed may act as a serious argument for independent candidates being coerced into joining the faction of the «parties of power».

However, not all of the cases of annulment of the election results were based on dubious claims. In some cases, the reasons for that were quite real and, should they have been left without proper reaction, could have set risky precedents. One of the examples was the annulment of the local (mayoral) election results by the Kirovohrad city election commission. The gross violations of the law there included the facts of filling out the ballots outside the special «confidentiality» booths, the cases of presence of several voters in a booth. Some voters who received the empty ballots and could vote had not shown any valid IDs as required by the law. The polling stations opened late, and a number of voters could not vote because of the long lines. Yet, such violations were observed at practically all polling stations. Noteworthy, an experiment in constituency #117 showed that «a voter had only 0.8 minute to express his or her «free will»» (www.for-ua.com, April 12, 2002). The queues at the polling stations, the bad technical organization of the elections did not influence the judgment of the Lviv Court of Appeal who rejected the complaints of Mykola Knyazhytsky, TV presenter, who ran for a seat in constituency #117 and demanded that the results of the voting be annulled as invalid. Hence, the elections are not over yet, and the new week may add some intrigue to the final vote counting as the process goes on.